#

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3642 OF 2006

Suraj Ramji Chavan & Anr. .. Applicants

Versus

State of Maharashtra .. Respondents

Mr.S.U.Marwadi for applicants

Mr.R.Y.Mirza, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 15th November 2006

P.C.

. Heard Mr.Marwadi for applicants and Mr.Mirza, A.P.P. for State.

2. Applicants are arrested in connection with C.R.No.322 of 2006 registered with Mumbra police station alleging offences punishable under section 498A, 302, 302B read with 34 I.P.C.

3. After inviting my attention to the statements which have been recorded by the police so also the Special Executive Officer (SEO), Mr.Marwadi submits that the deceased had succumbed to burn injuries which were caused by an accident. He submits that this is the clear narration in the statements recorded by A.S.I. Mr.Nandurbare, attached to the above police station. He submits that the applicants also sustained burn injuries while trying to save and protect the deceased. This is how her statement reads and the said fact is prima facie corroborated by the injury certificates. He submits that the injury certificates pertaining to present applicants would indicate that they were treated as out-door patient. Assuming without admitting that they were indoor patients

as alleged, yet, the dying declaration recorded in this case by the SEO is pursuant to a request of 14th August 2006 in writing made to the Supdt. Thane Civil Hospital. In this statement which is recorded on 14th August 2006 at about 3.15 hrs., the deceased does not state anything regarding the harassment or that she was set on fire by pouring Kerosene by her husband and mother in law. Mr.Marwadi has invited my attention to all the communications which were addressed to civil hospital. He submits that police machinery desired categorically to record statement of all three persons who had sustained injuries. As to what prompted the SEO to record a further statement of the deceased alone is not clear. In any event, prima facie, according to Mr.Marwadi the version set out in the dying declaration recorded by the SEO does not find any corroboration from other sources. There are no statements recorded of the family members.

4. Learned A.P.P. was called upon to take

instructions with regard to above submissions. These very contentions were raised before Learned Additional Sessions Judge as well. Learned Sessions Judge has referred to the say of investigating officer. It appears that the investigating officer had filed a detailed reply on two occasions before the Sessions Judge as well.

5. In the light of above, prosecution has filed an affidavit of Police Inspector, Mumbra Police Station. He is not the concerned officer but has taken charge subsequently. Deposing as he is from records, this is what is urged by him in paras 4 and 5 of his affidavit.

> "4. I say and submit that when deceased/complainant was admitted in Civil Hospital, Thane at about 1.30 a.m. on 14/8/2006, we got information about her hospitalisation and burns. Thereafter, A.S.I., Nandurbare reached

there at about 3 to 3.30 a.m. on 14/8/2006. Smt.Yasmin Irani, Special Executive Officer also reached in hospital. Thereafter, an application for recording of statements of persons getting burn injuries are given to Doctor. When we got information about incident, the information was given that three persons getting injuries are admitted in Hospital, therefore, the application was given to Doctor for recording the statements of all three injured persons. Doctor has given his opinion about consciousness of patient and allowed to record the statements of all three injured. SEO, Smt.Irani recorded statement of deceased/complainant Meena, as per the application given by SEO, Smt.Irani to Civil Hospital, Thane, she mentioned only recording of statement of deceased Meena and not other two injured. Thereafter

ASI, Nandurbare recorded statement of deceased/complainant Meena and when he came to know that deceased/complainant got grievous burn injuries and on point of death he recorded statements of deceased only not other two injured because their position is not so much serious.

5. I say and submit that when first statement of deceased Meena was recorded on 14/8/2006 at about 3.15 a.m. by SEO Smt.Irani complainant's husband was present with her and her mother-in-law was also near to her on other bed and both fo them threatened her, that if she stated anything about the incident, they they poured kerosene on her then she will be responsible for further consequences. Therefore, SEO Smt.IRANI recorded another statement on 15/8/2006 at about 5.55 a.m. when nobody from her in-laws was present.

> On duty PSI, Bhalerao also recorded second statement of complainant Meena on 15/8/2006 at about 7.15 a.m. with the permission of Doctor and about consciousness of patient. During the course of the investigation statement of SEO is also recorded on 17/8/2006 in which she stated all above facts."

5. Mr.Mirza has also invited my attention to the statements recorded of the deceased by A.S.I. Nandurbare so also that of S.E.O. recorded on 17th August 2006.

6. It is pertinent to note that the learned Additional Sessions Judge has referred to allegations about demand of dowry and harassment for non fulfilment of which applicants allegedly set the deceased Meena on fire while she was sleeping. There is also a reference made to the fact that the deceased was admitted in the same civil hospital and near her bed, her mother in

law was admitted. Her husband, applicant No.1 was also admitted. It is further pertinent to note that when the incident took place and was reported after the deceased was brought to the hospital, the civil hospital was approached by the police and it was by the same P.S.I. Nandurbare. A copy of this communication is at page 20. He requests that the prosecution is desirous of recording statement of all three and, therefore, the Medical Supdt. and other authorities should report as to whether the persons are in a position to give statement or not. This is clear from the further communication, a copy of which is at page 21. That is how, the entry in the police diary is made.

7. Thereafter, the deceased made statement, a copy of which is at page 11. She has very clearly stated that she caught fire because of the Stove and while she was cooking. Her mother in law and husband were in the house and they

immediately came and tried to save her by putting shawl around her and pouring water. During the course of this, they have also sustained injuries. Her brother in law Mangesh has brought her to the Hospital. She has not blamed anybody for the incident. That is how her version proceeds even when the SEO records her statement on 14th August 2006. On 17th August 2006, the hospital is again approached and it was requested that her statement needs to be recorded. Authorities should, therefore, certify whether she is in a position to make a statement or not. It is in these circumstances, that the statement of 15th August 2006 has been recorded. The time is 5.55 hrs. in the morning.

8. Normally, I would not have made reference to these materials in details but it was necessary to satisfy myself even at this prima facie stage as to whether the version which is spelled out from the third statement/dying declaration is corroborated or not. S.E.Os.

statement makes a reference to the fact of applicants allegedly harassing the deceased and threatening and pressurising the deceased when the first statement was recorded.

9. Prima facie there is substance in the contentions of Mr.Marwadi that when the I.O. does not dispute that all three had been admitted in the hospital for burn injuries merely because the wards were adjacent to each other, it is not possible that the dying declaration should have such variation. It is in such circumstances, that it is not possible to agree even at the prima facie stage that the dying declaration recorded on 15th August 2006 at the request of S.E.O., when it omits to make any reference to the applicants who are also injured, deserves to be accepted. The statement recorded on 14th August 2006 along with communications of the investigating machinery to the hospital would make, at this stage, the case of homicidal death doubtful. Whether the incident is an accident or

the deceased was put to death is something which will have to be established by corroborating contents of the conflicting declaration.

10. The apprehension of prosecution as expressed on affidavit that the applicants would tamper with the evidence and would not be available for the trial in absence of permanent roots or residence can be taken care of by imposing stringent conditions. Applicant No.2 is a lady. Applicant No.1 and she have been residing together is the assertion of Mr.Marwadi. That is something which the I.O. will be entitled to verify before release of applicants.

10. Hence, in my view, following order will sub-serve ends of justice.

i) The applicants (1) Suraj Ramji Chavan and (2) Lalmati Ramji Chavan arrested in connection with C.R.No.I-322 of 2006 registered with Mumbra Police

Station shall be enlarged on bail in the sum of Rs.5000/- each with one or two local sureties in the like amount.

ii) The bail is granted subject to condition that the applicants will remain present before the concerned investigating officer of Mumbra Police Station once a week on every Friday between 11.00 a.m. and 1.00 p.m. till conclusion of the trial.

iii) The order of bail will be given effect only after the applicants furnish to the investigating officer the details about his place of residence and address where he proposes to stay after he is enlarged on bail. The applicants will not change their residential address thereafter till the conclusion of trial without prior intimation to the Investigating officer.

iv) The bail is granted subject to condition that the applicants shall not directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with the prosecution evidence.

v) The applicas shall cooperate with the learned Trial Judge for expeditious disposal of the case. Any attempt by the applicants to delay the trial may be a ground for cancellation of bail.

vi) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

vii) Application is disposed of in above terms.

viii) Parties to act on an authenticated copy of this order.

. I am informed that investigations are complete and charge sheet is filed. The mother of deceased and her family members are residing at Ulhasnagar. Applicants, therefore, shall not enter limits of Ulhasnagar Municipal Corporation.

(S.C.DHARMADHIKARI, J)